FILE COPY

FILED
SEP 29 1933
CHARLES ELMORE CR

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 38

HAROLD T. GRISWOLD, W. W. S. CARPENTER, AND LAIRD BELL, EXECUTORS OF THE ESTATE OF WILLIAM H. REDINGTON, DECEASED,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR PETITIONERS.

WALTER T. FISHER,
Counsel for Petitioners.

THE DUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

INDEX.

	PAGE
Brief for Petitioners	1
Argument	2

CITATIONS.

Cases:

Chase National Bank v. United States, 278 U. S. 327	3
Crooks v. Harrelson, 282 U. S. 55	2
Klein v. United States, 283 U. S. 231	3
Knox v. McElligott, 258 U. S. 546	2
Lewellyn v. Frick, 268 U. S. 238	3
May v. Heiner, 281 U. S. 238	3
Shwab v. Doyle, 258 U. S. 529	3
Tyler v. United States, 281 U. S. 497	2

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1933.

No. 38.

HAROLD T. GRISWOLD, W. W. S. CARPENTER, AND LAIRD BELL, EXECUTORS OF THE ESTATE OF WILLIAM H. REDINGTON, DECEASED,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

BRIEF FOR PETITIONERS.

A statement of the case and of the question presented, together with a reference to the opinions below, the grounds on which the jurisdiction of this court is invoked, and a specification of errors, is contained in the petition for certiorari and the supporting brief already filed.

ARGUMENT.

The respondent seeks to uphold the tax in question on the authority of *Tyler* v. *United States*, 281 U. S. 497. His argument seems to be that since there was a taxable event at the death of the decedent, the tax is proper; and he points to the *Tyler* case to show that there was a taxable event. But it is not enough to show that there was a taxable event (see *Crooks* v. *Harrelson*, 282 U. S. 55). In order to justify the tax, the respondent must also show that there is a statute actually taxing that event. This he cannot do. The decedent died while the 1921 Act was in force, and under the authority of *Knox* v. *McElligott*, 258 U. S. 546, that act must be held not to apply to joint estates created before its passage. For this purpose, the date of creation of the estate is very material.

The respondent proposes to distinguish *Knox* v. *McElligott* on the ground that one-half of the property was taxed in that case. But the case cannot be disposed of in that way. The decision was based on the view that the 1916 Act did not apply to tenancies previously created. No middle ground is possible. The statute taxed all property "to the extent of the interest therein held jointly," etc. The interest held jointly, of course, was the entire property and not half of it. So when the court held that the statute did not cover all of the joint property, it necessarily held that the statute did not cover any portion of that property.

In order to affirm the decision in the present case, this court will have to overrule *Knox* v. *McElligott*. The court below and the respondent seem to think that *Knox* v. *McElligott* has already been overruled by *Tyler* v. *United States*. This, of course, is a misapprehension.

The question in *Knox* v. *McElligott* and the question in the present case is the meaning of certain words. Obviously those words must have the same meaning now as they had in 1916 when Congress first used them and in 1921 when this court construed them. Cases like *Tyler* v. *United States* which uphold the power of Congress to tax various interests as a part of a decedent's estate have no bearing on the question. If this court overrules *Knox* v. *McElligott* on the authority of *Tyler* v. *United States*, it may as well overrule *Shwab* v. *Doyle*, 258 U. S. 529, on the authority of *Milliken* v. *United States*, 283 U. S. 15, *Lewellyn* v. *Frick*, 268 U. S. 238, on the authority of *Chase National Bank* v. *United States*, 278 U. S. 327, and *May* v. *Heiner*, 281 U. S. 238, on the authority of *Klein* v. *United States*, 283 U. S. 231. But the principles upon which *Knox* v. *McElligott* and the other cases on construction are based—viz., that a tax statute will not be extended by implication, that a statute will not be given retroactive effect unless its language is "clear, strong, and imperative", and that doubts should be resolved in favor of the taxpayer—are as sound to-day as they were twelve years ago, and we submit that these cases should not be overruled.

Respectfully submitted,

WALTER T. FISHER
Counsel for Petitioners.